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**Essex Valley Visiting Nurses Association and New
Community Corporation and New Community
Health Care, Inc. and Health Professional and
Allied Employees, Local 5122.** Case 22–CA–
24770

November 16, 2010

SUPPLEMENTAL DECISION AND ORDER

**BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND HAYES**

On April 30, 2008, the two sitting members of the Board issued a Supplemental Decision and Order in this proceeding, which is reported at 352 NLRB 427.¹ Thereafter, the Respondents filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

² Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 352 NLRB 427 61 (2008), which is incorporated herein by reference.³

Dated, Washington, D.C. November 16, 2010

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ In incorporating the prior decision, Member Becker notes that, whether the Board applies the law pertaining to employee mitigation efforts set forth in *St. George Warehouse*, 351 NLRB 961 (2007), or the legal principles applied by the judge in her decision, the outcome of this case is unchanged. It is clear that the discriminatees engaged in reasonable job searches.